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TOWN ATTORNEY REPORT

DATE: October 31, 2001

FROM: Monroe D. Kiar 

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The resulting contract negotiated by the Town Administrator or his designee will be presented to the Council for approval at a future meeting date.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict for the Plaintiffs. The plaintiffs failed to file a timely Notice of Appeal and therefore, the jury verdict is now final. Mr. Burke has moved to tax court costs against the Plaintiffs. His motion remains pending.
3. **Sessa v. Town of Davie (Forman):** On September 6, 2001, the Town Attorney's Office forwarded to the binding mediator its Memorandum of Law concerning the Forman properties. This matter has been bifurcated pursuant to agreement of the parties and the initial issue for determination at the first mediation session was whether the Town was precluded from imposing a special road assessment upon the Forman properties as a result of a "Settlement Agreement" dated November 12, 1985, negotiated by the prior Town Attorney and a former Administration. It is the contention of the Formans that by virtue of the language contained in the Settlement Agreement in 1985 regarding annexation, the Town does not have a right to impose a special assessment for the road improvement in question. The Town Attorney's Office of course, has taken a different position, as has the prior Town Attorney. Both sides presented oral argument in support of their respective positions on this issue at the mediation session held on Tuesday, September 11, 2001. The provision in question, Section 5.(e) of the Settlement Stipulation reads "The Defendants

will provide fire and police protection together with sewer and water and other municipal services to the lands without any special assessment, surcharges or other special exactions or taxes." The position of the Town Attorney's Office is that the road in question was a capital improvement and therefore, the language in sub-provision 5.(e) of the Settlement Agreement does not provide the subject property with the perpetual exemption from special assessments from capital improvements, such as the road. The binding mediator requested that each side submit further legal authority in support of their respective positions. The Town Attorney's Office has submitted a supplement to the original Memorandum of Law Concerning the Forman Properties to the binding mediator in a timely fashion. The binding mediator has not yet ruled upon this issue

4. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** United States District Judge Jose A. Gonzalez, Jr. dismissed this action as to the Plaintiff, Coastal Carting Ltd. and as to the various municipal defendants, including Davie. Other garbage companies have since been allowed to intervene in this lawsuit and the case will proceed as to those new garbage companies. Despite repeated requests from the Town of Davie to the County, the County has refused to provide to the Town of Davie and the other municipalities a General Release of any further liability. Instead, the County has responded to Mr. Johnson's request by stating that the cities should be brought back into the lawsuit as defendants. The new garbage companies however, have indicated to Mr. Johnson that this is not their desire at this time. Nevertheless, it is Mr. Johnson's understanding that the municipalities may in fact be brought back into the case at a later date since the Resource Recovery Board of Broward County is still alleging that the municipalities are indispensable parties.
5. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A final hearing was held before Judge Cocalis regarding the Plaintiffs' Petition for Writ of Certiorari and both sides are awaiting the court's decision. In the meantime, the County is in negotiations with the property owner to purchase the 60 acres of commercial property in question for use as a regional park. The Town Council at its meeting of October 3, 2001, made a recommendation to the County by a 3-2 vote that the County proceed with its negotiations regarding the possible purchase of this land for use as a regional park and further, with its recommendation, requested that the property owner be required as part of any such purchase, to dismiss the instant lawsuits with prejudice, and release the Town of Davie of any and all further liability or cause of action relevant to the two lawsuits.
6. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal seeking further review of the matter by the United States Court of Appeals for the 11th Circuit. The Appellate Brief of MVP Properties, Inc. has been filed and the Answer Brief of the Town has been filed by Mr. Burke. The 11th Circuit Court of Appeal has selected this case for mediation under 11th Circuit Rule 33-1. It requires that a mediation be held in person on Thursday, November 1, 2001, at the Circuit Mediation Office in Miami, Florida. Mr. Burke will attend in person with the Town Attorney's Office and Staff attending if necessary, by telephone.

7. **Cummings v. Town of Davie:** The Town and the Plaintiffs entered into a Stipulation for Settlement which was filed with the court at the July 23, 2001 hearing. The Plaintiffs have begun the variance application procedures required under the terms of the Stipulation for Settlement and this item was placed on the last Planning & Zoning Board Agenda for its review and recommendations and will be coming before the Town Council in the forthcoming near future.
8. **Town of Davie v. Malka:** The Town Attorney's Office has been in close contact with our Building Official, Mr. Sprovero. Mr. Sprovero has advised the Town Attorney's Office that the exterior of the home is nearly complete. The exterior has been painted and the construction debris removed. The roofing tiles have been received and the roofing is taking place. The completion of the exterior has been the principal goal of the Code Enforcement Division, the Town Attorney's Office and the Building Department, as well as the residents in the community. The owner has applied for a permit to complete the interior of the structure.
9. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The Town Attorney's Office has been in close contact with the attorneys for the other member cities and the County comprising the coalition of cities. The Florida Department of Agriculture had filed a Motion seeking to tax costs of approximately \$11,000.00 against the County and the coalition of cities relevant to the 4th District Court of Appeal's reversal of Judge Fleet's ruling in the Circuit Court case. A settlement was reached whereby the Department of Agriculture will receive \$8,000.00 rather than the \$11,000.00 it sought. This will mean that each city will be responsible for approximately \$800.00 relevant to those costs. At the October 3, 2001 Town Council Meeting, the Council was advised by the Town Attorney's Office that the County had requested each city to be prepared to contribute between \$2,500.00 and \$3,000.00 to cover the costs sought by the Department in the Circuit Court case, and to cover current and future costs incurred by the County on the Department of Administrative Hearings level. The County anticipates that its costs will ultimately \$30,000.00. The Town Council authorized such payment to the County, should the County not be able to recover its costs in the DOAH proceeding where the County and the coalition were successful in their challenge of the Rule promulgated by the Department of Agriculture. The Chief Appellate Attorney for the County has assured the Town Attorney's Office that the monies authorized for payment by the Town Council, if needed, of \$2,500.00 to \$3,000.00 should cover Davie's share of the total anticipated costs. Also, as the County and the municipalities will be paying the costs, any personal liability for payment of same by the individual plaintiffs or Davie residents has been eliminated. The Department of Agriculture has filed an Appeal of the DOAH ruling and the coalition is at present, preparing its Answer Brief to be submitted to the DOAH. The Department of Agriculture has promulgate a new rule and the coalition of cities and the County anticipate filing their new rule challenge on November 26, 2001.
10. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion

for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. There is a good likelihood therefore, that even if our Motion for Summary Judgment is not granted, that this lawsuit will not be heard before the end of the year, should it go to trial.

11. **Reinfeld v. Town of Davie, et al:** A Motion to Dismiss the remaining individual defendant, Mr. Weiner, was filed by the Florida League of Cities attorney, Mr. Marrero, but said Motion has been denied by the Court. Accordingly, Mr. Marrero has filed an Answer on behalf of Mr. Weiner in these proceedings. Judge Moore's Order, while denying Defendant Weiner's Motion to Dismiss, does state on page 2 of his Order however, that "While Defendant Weiner has claimed that he was acting within the scope of his duties, the issues of what the scope of his duties was, and whether he was acting within them, are better resolved in summary judgment or at a trial on the merits." The Town Attorney's Office has spoken directly with Attorney Marrero and he has authorized the Town Attorney's Office to advise the Council that it is his expectation that his office will be moving for summary judgment on this matter on behalf of Mr. Weiner in the near future and his office remains confident that any such Motion for Summary Judgment will ultimately be granted by the Court.
12. **Spur Road Property:** The Town's outside legal counsel, Mr. Burke has indicated that the Department of Transportation has agreed to award the property to the high bidder and the Town has filed with the Department its notice that it will be filing a formal protest of the Department's action. The next step, according to Mr. Burke, will be for the Town to file a formal protest and then the Department must make a ruling or send this matter to the Division of Administrative Hearings for further action.
13. **Victoria Saldena v. Town of Davie:** The Town Attorney's Office has spoken with the League of Cities attorney assigned to represent the Town in this case, Mr. Bruce Johnson. Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson has assured the Town Attorney's Office that there should be no exposure to the Town which exceeds its insurance coverage and that the maximum exposure to the Town is its deductible.